

This letter concern a question regarding the procedure for claiming a credit for tax paid on the purchase of a vehicle for lease that is subsequently sold at retail. See 86 Ill. Adm. Code 130.2013. (This is a GIL.)

September 15, 2003

Dear Mr. Xxxxx:

This letter is in response to your letter dated February 18, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

This is a request for an information letter on the application of the statute of limitations for a claim for credit under 86 Ill. Admin. Code Sections, 130.2010 and 130.1501.

The facts are as follows: Company A is a leasing company who leases vehicles for more than one year. It purchases such vehicles for an out-of -state vendor for lease in Illinois, and pays Illinois and appropriate local Use Tax (together 'Use Tax') to the Illinois Department of Revenue ('Department') on such purchase. After the vehicle leases are completed, usually 3 to 5 years later, the vehicles are sold in Illinois to users and the required Illinois and local Retailers Occupation Tax (together 'ROT') is paid on the sale by Company A.

Under Regulation 130.2010, Company A is entitled to a credit against the ROT it pays on the subsequent sale of the leased vehicles, up to the amount of any Use Tax it paid on the initial purchase of the vehicles. Id. at 130.2010(h). The credit is either taken on the ST-556 filed by Company A at the time of the subsequent sale or is claimed by filing an Amended RUT-25 with the Department. Id.

Issue

An issue has arisen as to when the statute of limitations starts to run on Company A's filing of the RUT-25, since the 'overpayment' giving rise to the credit being claimed does not occur until Company A's payment of ROT with its filing of the subsequent ST-556. Moreover, until this subsequent sale occurred and the tax payment made, there is no 'erroneous payment', as provided in Section 130.1501, to start the running of any statute of limitations to obtain the credit. Similarly, because the Equal Protection and Commerce Clauses of the U.S. Constitution prohibit putting non-Illinois purchases of

vehicles at a disadvantage for purposes of the Illinois Use Tax, in order to be constitutional the statute of limitations starting date should be the same for vehicles purchased both in state and out-of-state.

Law and Discussion

Regulation Section 130.2010 establishes two different methods for a leasing company to obtain a credit for tax paid on the subsequent sale of a leased vehicle, in which the leasing company paid Use Tax on the vehicle's initial purchase. For vehicles purchased in Illinois, where Use Tax is collected by the vehicle dealer from the leasing company, the leasing company is allowed to claim the credit upon the subsequent sale of the vehicle in Illinois on the ST-556 filed by the leasing company. This reduces the ROT owed by the leasing company that must be remitted with the ST-556.

For vehicles purchased outside Illinois, the leasing company is also entitled to the same credit, but the leasing company must first file the ST-556 and pay the ROT due and then file an amended RUT-25 to recover the credit against the overpayment.

The Illinois ROT and Use Tax provides that a credit can be given for tax payments that have 'been paid which are not due under this Act.' 35 ILCS 120/6. The credit is allowed in order to recover the 'erroneous payment.' 35 ILCS 120/6. This same wording is used in Regulation Section 130.1501.

Applying the above law, the initial Use Tax payments by the leasing company cannot consider the payments 'not due' or 'erroneous,' because they were proper when made. Rather, the payments being made with the ST-556 are the overpayments that are considered 'not due' or in 'error', because of the leasing company's entitlement to a tax credit. As a result, applying the plain wording of 35 ILCS 120/6 and Regulation Section 130.1501 would indicate that the overpayment for which a credit is being claimed must be the new payment of Tax by the leasing company, and not the initial correct payment.

Consequently, because the statute of limitation runs from the date the amount was 'erroneously paid,' this, logically, can only be the date of the payment of the additional tax by the leasing company with the subsequent ST-556. 35 ILCS 120/6.

Nevertheless, if the Department considers that the initial Use Tax payment was somehow the 'erroneous payment' of tax, then under established Department policy a credit must still be determined based on the date the payment became 'erroneous.' For decades, the Department has recognized that the statute of limitations on the filing of a claim for credit runs from the 'date' the taxpayer paid the tax 'in error.' See e.g. Dept. Letter Ruling dated 9/1/76 (excerpt attached); See also 35 ILCS 120/6. As explained by the Department, the statute of limitations on credits has two elements; (1) the payment of the tax and (2) the time the payment becomes erroneous. Id. While these events generally occur simultaneously, the Department has historically recognized that in some cases they are not. Dept. Letter Ruling dated 9/1/76.

The Department has correctly concluded that if a payment was proper when made and only later becomes 'erroneous,' then the statute of limitations starts running from the date the payment actually becomes 'erroneous.' Id. This reasoning also would be the only reasonable interpretation of Section 130.2010, in order to make such claims for credit consistent with the treatment of the same credits for vehicles purchased in Illinois,

since an inconsistent treatment of the two would appear to violate the Equal Protection and Commerce Clauses of the U.S. Constitution. E.g., Williams v. Vermont, 472 U.S. 14 (1985); Boston Stock Exchange v. State Tax Commission, 429 U.S. 318 (1977); Halliburton Oil Well v. Reily, 373 U.S. 64 (1962) Pawa v. McDonald, 921 F. Supp. 227 (Dist. VT, 1996).

Based on the above, please confirm to me whether the Department will be interpreting Sections 130.2010 and 130.1501 as provided herein.

Thank you for again for your time and consideration of this matter.

DEPARTMENT'S RESPONSE:

We are responding your inquiry under the assumption that the Department regulation that you have referenced in your letter (86 Ill. Adm. Code 130.2010) is actually Section 130.2013 entitled "Persons in the Business of Both Renting and Selling Tangible Personal Property-Tax Liabilities, Credit" (86 Ill. Adm. Code 130. 2013). The Department declines to address the issues raised in your letter in the context of a General Information Letter. Please refer to FY Bulletin 86-54 and Administrative Code provisions 86 Ill. Adm. Code 130. 2013 and 130.1501 for information on these issues.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk